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|-----------------|-------------|----------------------|---------------------|------------------|
| 08/989,352 | 12/12/1997 | STEPHEN B. MAGUIRE | 1147-97 | 8734 |

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EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|--------------------------------------|--------------------------------|
| Application No. 08/989,352 | Applicant(s) Maguire |
| Examiner Charles Cooley | Art Unit 1723 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above, claim(s) 54-58 is/are withdrawn from consideration.
- 5) Claim(s) 2, 8-11, 13, 15, and 30-35 is/are allowed.
- 6) Claim(s) 1, 3-7, 12, 14, 16-29, and 36-53 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims 1-58 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 4 Apr 2001 is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 35 6) Other: _____

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OFFICE ACTION

Election/Restriction

1. Applicant's election with continual traverse of Group I - claims 1-53 is acknowledged. The traversal is on the ground(s) that the restriction is improper. This is not found persuasive because Group I and Group II are clearly related as combination and subcombination and restriction is proper between the groups as outlined in MPEP 806.05(c).

The requirement is still deemed proper and is therefore made FINAL. Note the nonelected claims appear to have been filed in a divisional application assigned to another art unit.

2. Claims 54-58 are thereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 15.

Information Disclosure Statement

3. Note the attached PTO-1449 form submitted with the Information Disclosure Statement (Paper No. 35).

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Drawings

4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 04 APR 2001 have been approved by the Examiner.

Specification

5. The disclosure is objected to because of the following informalities:
- a. The amendments to the specification filed 12 JUL 2002 which amend pages 11, 19, 21, 23, 24 have not been entered as the requested amendments do not match the existing text of the specification. For example, the requested amendment to page 11, line 18 attempts to amend a middle portion of a paragraph and the text does not match whatsoever. Each of these amendments should be resubmitted in proper format to ensure entry thereof. Since the amendments were not entered, the previous objections are repeated:
 - b. the missing application data on page 1, first paragraph of the specification should be provided.
 - c. Page 1, last line appears to be missing text since the first line on page 2 begins a new sentence.
 - d. Page 2, last line: it appears "component" should be --compartment--.
 - e. Page 24, line 4: the status of the referenced application should be updated.
- Appropriate correction is required.

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6. The abstract is acceptable.
7. The title is acceptable.

Claim Objections

- a. Claim 22 lacks ending punctuation.

Correction is required.

Claim Rejections - 35 U.S.C. § 112

8. Claims 6, 7, 12, 14, 16-29, and 44-53 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6, line 13: "said upwardly extending surfaces" lacks antecedent basis - note intervening claim 3 was not included in amended claim 6. In line 13, the structural cooperation between the upwardly extending surfaces and the housing is vague - are these surfaces part of the housing? (see claim 3).

Claim 7, last line: "said upwardly extending surfaces" lacks antecedent basis - note intervening claim 3 was not included in amended claim 7 and the structural

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cooperation between the upwardly extending surfaces and the housing is vague - are these surfaces part of the housing? (see claim 3).

Claim 12: "said valve means" lacks antecedent basis.

Claim 14: "said valve means" lacks antecedent basis.

Claim 16, line 3: "housing" should be --hopper--.

Claim 44: "the strap" and "said strap" lack antecedent basis. Note the reference to the strap was removed from claim 43.

Claim 45: "said strap" lacks antecedent basis.

Claim 46 is worded in an awkward and confusing manner.

9. Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

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Double Patenting

10. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

11. Claims 36-41 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 28-32 and 50-51 of prior U.S. Patent No. 6,467,943 to Maguire. This is a double patenting rejection.

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be

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used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1, 3-5, and 41-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 22, 27, 33, and 34 of U.S. Patent No. 6,467,943 to Maguire. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims 1, 2, 22, 27, 33, and 34 anticipate the application claims 1, 3-5, and 41-42. See *In re Goodman*, supra.

14. Claim 43 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 33 of U.S. Patent No. 6,467,943 to Maguire in view of the photographs of UNA-DYN gravimetric blender (circa 1993).

Claim 33 of U.S. Patent No. 6,467,943 to Maguire recites the subject matter of claim 43 of the instant application with the exception of the means for connecting the panel with the frame. The photographs of UNA-DYN gravimetric blender show a transparent panel and a frame with fastening means (hinges and bolts) for connecting the panel to the frame. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the invention defined by claim 33 of U.S. Patent No. 6,467,943 to Maguire with means for connecting the panel with the frame as shown by the photographs of UNA-DYN gravimetric blender for

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the purpose of enabling the panel to be swung away from the frame (via the hinges) for allowing access to the interior of the frame for inspection, repair, etc.

Allowable Subject Matter

15. Claims 1, 3, 4, 5, and 42-53 would be allowable if the obviousness-type double patenting is overcome.
16. Claims 6, 7, 12, 14, 16-29, and 44-53 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.
17. Claims 2, 8, 9, 10, 11, 13, 15, and 30-35 are allowable over the prior art.

Response to Amendment

18. Applicant's arguments with respect to the pending claims have been considered but are deemed to be moot in view of the new grounds of rejection necessitated by the issuance of U.S. Patent No. 6,467,943 to Maguire.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is **(703) 308-0112**.

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20. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ☎ (703) 308-0651.



Dated: 12 June 2003

**Charles Cooley
Primary Examiner
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